84-1488

Office - Supreme Court, U.S.
FILED
MAR 21 1985
ALEXANDER L. STEVAS,
CLERK

No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1984

GEORGE L. KARAPINKA,

Petitioner

vs.

UNION CARBIDE CORPORATION,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road, B-14
Morgantown, West Virginia 26505
(304) 599-8686

5 1/4

QUESTIONS PRESENTED

I. Whether the state statute of limitation can be applied to the assignments of the U.S. patents, which assignments are required by 35 U.S.C. Sec. 261 and which assignments are subject to the ruling of this Court.

II. Whether the court of appeals can grant the motion for dismissal of appeal without considering essential evidence to the contrary which has been readily available to that court and thus violate human rights of the appellant.

TABLE OF CONTENTS

Page

Citations to Opinions Below 1

Jurisdiction 1

Statutory Provisions 1

Statement of the Case 4

Argument 14

Conclusion 31

Appendix

Order of the Court of Appeals; Dated December 24, 1984 ..... a-1

Order of the District Court; Dated July 10, 1984 ..... a-2

Order of the District Court; Dated August 13, 1984 ..... a-11

Affidavit of George L. Karapinka; Dated December 4, 1984 ..... a-12

TABLE OF AUTHRITIES

Cases	Page
Brown Shoe Co. v. United States, 1961, 370 U.S. 294, 306	25,27
Cohen v. Beneficial Loan Corp., 1948, 337 U.S. 541, 546-7	12,27
Conley v. Gibson, 1957, 355 U.S. 41	24,25,27
Crown Die & Tool Co. v. Nye Tool and Machine Works, 1923, 261 U.S. 24,33	14,18,19, 20
Deitrick v. Greaney, 1940, 309 U.S. 200	23
Foman v. Davis, 1962, 371 U.S. 181	25,27
Perma Research & Development Co. v. Singer Co., 402 F. Supp. 881 (S.D.N.Y., 1975)	21
United States v. Dubilier Condenser Corp., 1932, 289 U.S. 178, 186-9 .	5,7,9,15, 17,21,22
Waterman v. Mackinzie, 1890, 138 U.S. 252, 255	14,18,19

Statutes

28 U.S.C. Sec. 1254(1)	1,15
28 U.S.C. Sec. 1338(a)	2,4,5
28 U.S.C. Sec. 2201	2,4,5
28 U.S.C. Sec. 2202	2,4,5

	Page
28 U.S.C. Sec. 2202	2,4,5
Federal Rules of Civil Procedure	
Rule 59(e)	3,9,10,14, 31
Federal Rules of Appellate Procedure	
Rule 3(d)	3,12
Rule 10(a)	3,11,29
Rule 11(b)	4,29
Other Authorities	
9 Moores Federal Practice (2d Ed.) 203.18	27

Petitioner pro se prays that a writ of certiorari issue to review the questions presented above.

CITATIONS TO OPINIONS BELOW

The United States Court of Appeals for the Second Circuit dismissed my appeal by it's Order of December 24, 1984, a copy of which is anexed hereto as a-1*. The Orders of the U.S. District Judge Roger J. Miner are anexed hereto as a-2 and a-11 respectively.

JURISDICTION

The appeal was dismissed by the U.S. Court of Appeals for the Second Circuit on December 24, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS

Statutes

28 U.S.C. Sec. 1254(1): By writ of certi-

---

* Appendix below

orari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. Sec. 1338(a): The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights, and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

28 U.S.C. Sec. 2201: In a case of actual contraversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. Sec. 2202: Further necessary or proper relief based on a declaratory judgmant or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

35 U.S.C. Sec. 261: Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patents, patents, or any intrest therein, shall be assignable in law by an instrument in writting. The applicant, patentee, or his assigns or legal representatives may in like manner grant and

convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oath within the United States or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oath whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or a application for patent.

An assignment, grant or conveyance shall be void as against any subsequent purchaser or morgagee for valuable consideration without notice, unless it is recorded in the Patent Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

Rules

Rule 59(e) of Fed. R. Civ. P.: A motion to alter or amend the judgment shall be served no later than 10 days after the entry of the judgment.

Rule 3(d) of Fed. R. Ap. P.: The clerk of the district court shall serve notice of the filing of the notice of appeal by mailing the copy thereof to counsel of record of each party other than the appelant, or, if a party is not represented by counsel, to the party at his last known address; and the clerk shall transmit forthwith a copy of the notice of appeal and of the docket entries to the clerk of the court of appeals named in the notice. (Relavant part)

Rule 10(a) of Fed. R. Ap. P.: Composition of the Record on Appeal. The original papers

and exhibits filed in the district court, the transcripts of proceedings if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

Rule 11(b) of Fed. R. Ap. P.: When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. (Relavant part)

STATEMENT OF THE CASE

The Complaint (A-4)*, invoking the jurisdiction of the District Court on the basis of 28 U.S.C. Sec. 1338(a), 2201, 2202, and 35 U.S.C. Sec. 261, and which complaint charged Union Carbide Corporation, defedant-appellee, with illegally obtaining the Assignments (A-8,A-10) to my U.S. Patents No. 3,709,853 and No. 3,756,998 and thus infringing those Patents, had been filed December 19, 1983; the District Court was asked to declare the patent Assignments in A-8 and in A-10 to be null and void. The Complaint also charged that the U.S. Patents listed

---

* Appendix to the Court of Appeals Briefs

in Paragraph 7 (A-5) of the Complaint are invalid. The Complaint was dismissed (A-48) for failure to state the claim, with leave to file an amended complaint in 30 days. Motion for reconsideration was denied April 13, 1984 (A-81).

The Amended Complaint, invoking the jurisdiction of the District Court on the basis of 28 U.S.C. Sec. 1338(a), 2201, 2202, and 35 U.S.C. Sec. 261, was filed April 13, 1984. It charges Union Carbide with obtaining the Assignments (A-74, A-76) of my U.S. Patent Applications No. 138,611 and No. 767,508 which have resulted in U.S. Patents No. 3,709,853 and No.3,756,998 respectively, contrary the decision of this Court in United States v. Dubilier Condenser Corp., 1932, 289 U.S. 178, 186-9, and thus with infringing these Patents by licensing the inventions contained therein and collecting revenue and royalties from those licenses. I pray the District Court in my Amended Com-

plaint to declare the Assignments of these Patents, which have been recorded in the U. S. Patent Office in accordance with 35 U.S. C. Sec. 261, to be null and void and to declare the titles to these Patents to be mine and to order Union Carbide to transfer to me all the revenue and royalties derived from those licenses. I am also asking the District Court to declare U.S. Patents in Paragraph 11 (A-72), which have been issued to Union Carbide, to be invalid because they disclose and/or claim my inventions which are unpatented by me without listing me as an inventor or a coinventor. The Amended Complaint was dismissed for failure to state the claim on July 10, 1984 (a-6), entered July 11, 1984; motion for reconsideration was denied August 3, 1984 (a-11), entered August 15, 1984. Notice of Appeal was filed August 28, 1984 (A-157).

In my Amended Complaint (A-70), which had been filed April 13, 1984 after the mo-

tion to reconsider was denied in which motion I was not permitted by the District Court to make any argument in support of that motion, I showed specific illegal acts of Union Carbide which made the Assignments in A-74 and in A-76 null and void, manely that my signing of those Assignments had been contrary to this Court's decision in United States v. Dubilier Condenser Corp., supra, because I had not been employed by Union Carbide to invent the assigned inventions; I had invented these inventions on my own time and outside of my employment (A-70, 71). I also showed there that Union Carbide was infringing my U.S. Patents No. 3,709,853 and No. 3,756,998 by licensing the inventions contained therein and collecting revenue and royalties from those liceses.

Since Union Carbide did not respond in any way in over 20 days to my Amended Complairt, I served by first class mail on May 4, 1984 my motion for judgment by default

(A-82) supported by my Affidavit, in accordance with Rule 55(b)(2). My motion was based on Rule 55(a) which requires responsive pleading within 10 days of service of amended pleading, that is my Amended Coplaint. On May 7, 1984 Union Carbide served its motion for partial dismissal of my Amended Complaint under Rule 12(b)(6) and for a more definite statement under Rule 12(e) (A-92). During the oral argument on May 25, 1984 Union Carbide claimed that the Amended Complaint was not an amended pleading. Contrary to its previous ruling on April 13, 1984 (A-66 lines 17,18) District Court denied my Motion for Judgment by Default(a-5). Union Carbide, further, without any basis maintained that the Assignments in Exhibits A (A-74) and B (A-76) of my Amended Complaint are "contracts" and therefore the action is barred by the New York statute of limitations. The District Court without permitting me to make my argument, stopped the

proceedings and reserved the judgment.

The Chamber Order dealing with the Court proceedings on May 25, 1984 was issued July 10, 1984, entered July 11, 1984 (a-2). Contrary to its earlier ruling (A-66) District Court ruled that the Amended Complaint was not an amended pleading and therefore Rule 15 did not apply. District Court also dismissed the Amended Complaint for failure to state the claim on the erroneous basis that an assignment of patent is a contract (a-7). I was directed to provide Union Carbide with a more definite statement in 30 days about my unpatented inventions, although the term "unpatented invention" was plenty definite to plead responsevely.

July 19, 1984 I filed my motion for reconsideration of District Court's Order of July 10, 1984 under Rule 59(e). In my moving papers (A-127) I showed that the source of my claim are the Acts of Congress and the ruling of this Court in United States v.

Dubilier Condenser Corp., supra, but no diversity of citizenship. I also stated there that the statement in my Amended Complaint regarding my "unpatented inventions" was definite enough to plead pesposively and that at that time it was impossible for me to supply a more definite statement than "unpatented inventions" of my Amended Complaint (A-130). During the oral argument on August 3, 1984 I was interrupted by the District Court and I was not permitted to complete my argument. District Court denied my motion for reconsideration, motion under Rule 59(e) (a-11).

The entire Amended Complaint was dismissed for failure to state the claim on July 10, 1984 including the portion of the Amended Complaint dealing with Union Carbide's Patents which contain my "unpatented inventions". Union Carbide for the purpose of delay needlessly filed its Motion under Rule 12(b)(6) for Dismissal of those Claims of

the Amended Complaint Relating to Plaintiff's "Unpatented Inventions". Those "unpatented inventions" were already dismissed July 10, 1984 (a-9).

My Notice of Appeal was mailed to the Clerk of the U.S. District Court in Albany, N.Y. on August 21, 1984. On August 23, 1984 I received the telephone call from the Clerk's Office in Albany, N.Y. stating that my Notice of Appeal was received by that Office and requesting the appeal's fee of $70.00. This Notice of Appeal, however, was filed August 28, 1984 (A-157).

The transcripts of the District Court's proceedings on May 25, 1984 and on August 3, 1984 which show that I was not permitted by the District Court to be heard, had been ordered August 27, 1984; they were never made part of the record on appeal before the dismissal of the appeal, contrary to Rule 10(a) of the Federal Rules of Appellate Procedure (F.R.A.P.). My Affidavit in opposition to

Union Carbide's Motion for Dismissal of the Appeal (a-12) which awers the fact that I have been prevented by the District Court to make my arguments on May 25, 1984 and on August 3, 1984, was not filed by although submitted to the Court of Appeals and therefore was not considered by that Court. See Court of Appeals' Doket Entries. This readily available evidence, showing that the appeal was proper in accordance with the ruling of this Court in Cohen v. Beneficial Loan Corp., 1948, 337 U.S. 541, 546-7 was not before the Court of Appeals at the time of the dismissal of the appeal.

The act which is contrary to Rule 3(d) of F.R.A.P. has been committed by the District Court; it did not transmit the copy of the Notice of Appeal, which had been filed August 28,1984, nor the copy of the District Court's Docket Entries to the Court of Appeals. I had to file, therefore, on October 26, 1984 the motion in the District Court

to accomplish that transfer (a-13). Court of Appeals' Scheduling Order #1 was issued November 9, 1984.

On November 30, 1984 Union Carbide filed its motion for dismissal of my appeal alleging that it was premature under Rule 54(b) of F.R.C.P., but without filing a Notice of Appearence for any of its attorneys.

To make the transcripts of the District Court's proceedings on May 25, 1984 and on August 3, 1984 a part of the record on appeal, before the ruling of the Court of Appeals on Union Carbide's Motion to Dismiss the Appeal, I mailed to the Clerk of the Court of Appeals on December 20, 1984 my Motion for Direction of the Clerk of the Court of Appeals to obtain those transcripts. This Motion of mine was totally ignored by the Court of Appeals. These transcripts, the copies of which I obtained November 26, 1984, contain numerous misleading errors. The corection of these errors

was entered on pages 8-9 of the Brief of Appellant George L. Karapinka which had been filed in the Court of Appeals on December 17, 1984.

On January 8, 1985 I received in the mail the Court of Appeals' Order granting Union Cabide's Motion for Dismissal of the Appeal which had been entered on December 24, 1984 (a-1). My untimely Motion for Rehearing in accordance with Rule 59(e) of F. R.C.P. had been mailed to the Court of Appeals on January 9, 1985; it was not dismissed yet.

ARGUMENT

I. STATE STATUTE OF LIMITATION CAN NOT BE APPLIED TO THE ASSIGNMENTS OF THE U.S. PATENTS, WHICH ASSIGNMENTS ARE REQUIRED BY 35 U.S.C. Sec. 261 AND WHICH ASSIGNMENTS ARE SUBJECT TO THE RULING OF THIS COURT

The lower Court had ruled on that issue in conflict with the decision of this Court in Waterman v. Mackinzie, 1890, 138 U.S. 252, 255, Crown Die & Tool Co. v. Nye Tool

and Machine Works, 1923, 261 U.S. 24, 33, and in United States v. Dubilier Condenser Corp. 1932, 289 U.S. 178, 186-9.

The ruling of this Court on the above issue is very important to the economic growth of the United States. The Court of Appeals dismissed my appeal without ruling on the issue. Writ of certiorari, which is my only legal remedy now, is therefore requested from this Court in accordance with 28 U.S.C. Sec. 1254(1).

The Congress created the patent system to stimulate the inventorship and through it the rapid expansion of industry and economy of the United States. This patent system warked well in the past when an independent inventor could develop relatively inexpensively his invention. But in recent years the development of a scientific invention requires sophisticated equipment and research facilities which are not readily avaluable to an independent inventor. The

great majority of the inventors, or potential inventors are therefore employed by the institutions that can efford this equipment and research facilities. Because the great majority of employed inventors are not realistically compensated for their inventions by ther employers ($1.00 or some other token compensation is not considered to be realistic) there is no incentive for them to invent and the United States has fallen therefore behind in many technological areas behind Japan and West-European countries whose employed inventors are required by law to be compensated realisticaly by their employers for their inventions. In some cases the employer in the United States considers it to be advantageous for him to dismiss the inventor, while retaining title to the invention without any compensation to the inventor; the situation that is the part of this Petition. That type of treatment of the employed inventor does not

create incentive to invent but discourages inventorship.

The result of this lack of compensation of employed inventors for ther inventions in this Country is the rapid narrowing of the once wide technological gap between United States and Japan and other western countries or in some technologies falling of United States behind those countries. To help to reverse this trend this Court should, therefore, grant this Petition and reafirm and reinterpret this Court's ruling in United States v. Dubilier Condenser Corp. supra, in accordance with which the employed inventor, absent an employment contract, has the title to his patented invention which was invented outside of his employment but developed with the resources of his employer. In accordance with this decision the employer has the nonexclusive license of the invention, and the inventor gets the royalties from other licensing.

The ruling of the District Court on my Amended Coplaint (A-70) is, therefore, against the decision of this Court.

Therefore, to stimulate inventorship and through it technological expansion and economic growth of the United States, it is essential that this Court grants this petition for certiorari and reafirms and reinterprets its ruling in United States v. Dubilier Condenser Corp., supra.

Certiorari should also be granted because the District Court misinterpreted 35 U.S.C. Sec. 261 in its ruling that all the assignments are contracts and terefore the assignments of my U.S. Patents No. 3,709,853 (A-74) and No. 3,756,998 (A-76) are contracts and not assignments required by 35 U.S.C. Sec. 261. This District Court's ruling (a-6) is also contrary to the decision of this Court in Crown Die & Tool Co. v. Nye Tool and Machine Works, 1923, 261 U.S. 24, 33 and in Waterman v. Mackenzie, 1890, 138

U.S. 252, 255. This Court in Crown Die & Tool Co. v. Nye Tool and Machine Works, supra, makes a very clear distiction between the patent assignment and a contract involving patents. This Court is stating there that a patent assignment can not be a contract at the same time and that a law suit involving the validity of a patent assignment is a question arising under patent laws. That is exactly the situation in my case. If the Assignments in A-74 and in A-76 are valid the District Court should have ruled one way and if they are invalid, the other way. Therefore no New York statute of limitation is applicable. Previously this Court in Waterman v. Mackenzie, supra, defined patent assignments: "The patentee or his assigns may by instrument in writting, assign, grant and conway, either, 1st, the whole patent, comprising the exclusive righ to make, use and vend the invention through the United States;"... This definition fits

the Assignments of my Patents in A-74 and in A-76 perfectly. See also Crown Die & Tool Co. v. Nye Tool and Machine Works, supra at 37. In view of those two decisions of this Court no New York statute of limitation can possibly be applied to the Assignments of my Patents No. 3,709,853 (A-74) and No. 3,756,998 (A-76). These Assignments assigned to Union Carbide my U.S. Patent Applications No. 138,611 and No. 767,508 respectively, on the basis of which those Patents were granted. The examination of these Patent Assignments clearly show that they are not contracts. Firstly the title: "Assignment of Invention, Priority Rights and Rights to Apply for Patents" and secondly, the last paragraph of these documents "Acceptance. We the undersigned Union Carbide Corporation of 270 Park Avenue, New York, State of New York, United States of America do hereby declare that we have accepted the foregoing assignment"(emphasis added) clear

ly state that these documents are assignments and nothing else. The authenticity of these documents, as true copies of the originals required by 35 U.S.C. Sec. 261, was never questioned by Union Carbide or District Court, otherwise I could have submitted the certified copies of these Assignments.

The reliance of the District Court in its Order of July 10, 1984 (a-7) on Perma Research & Development Co. v. Singer Co., 402 F. Supp. 881 (S.D.N.Y. 1975); 542 F.2d 111 (2d Cir.) and on United States v. Dubilier Condenser Corp., 289 U.S. 178, 187 is erroneous. In Perma, supra, the patent assignment as a separate and distinct entity was a part of contract. The validity of that assignment was never in question. This contract also involved royalties by contract (see Crown v. Nye, supra), payment of debt, and etc.. It is a pure breach od contract action. This decision does not have

any relevance to this case. The District Court's interpretation of United States v. Dubilier Condenser Corp., supra is not valid because there is no valid employment contract, or any contract between myself and Union Carbide. The Amended Complaint, Paragraphs 2, 3, and 4 (A-70,71), clearly shows that my employment with Union Carbide was general one and that I was not hired to invent the inventions of U.S. Patents No. 3,709,853 and No. 3,756,998, and that I invented them outside of my employment. Those Assignments (A-74,76) in accordance with United States v. Dubilier Condenser Corp., 289 U.S. 178, 186-9, are null and void.

The Assignments in A-74 and A-76 are obviously assignments as defined by Crown and Waterman, supra and required by 35 U.S.C. Sec. 261. These documents are only required by that statute and have been recorded in accordance with that statute only in the U. S. Patent Office as the stamps of that Offi-

ce on them clearly show. Therefore no statute of limitation of the State of New York can be applied to those documents. Support for this fact is also found in Deitrick v. Greaney, 1940, 309 U.S. at 200. In that decision the operation of 12 U.S.C. Sec. 83 and other Sections were under consideration. In my case the operation of 35 U.S.C. Sec. 261 is under consideration. Both 35 U.S.C. Sec. 261 and 12 U.S.C. Sec. 83 are the Acts of Congress to which no statute of any state can be applied.

In my Amended Complaint I pray the District Court (A-73) to declare my Assignments of U.S. Patents No. 3,709,853 and No. 3,756,998 to be null and void and to declare the titles to those Patents to be mine. If the Assignments in A-74 and A-76 are not the assignments required by 35 U.S.C. Sec. 261, then Union Carbide has to produce other assignments in order to have titles to those Patents, otherwise the titles to them are

mine. If the Assignments in A-74 and A-76 are the assignments required by 35 U.S.C. Sec. 261 then the District Court should have ruled in accordance with this Court in Crown v. Nye, at33 and 37, supra and in Waterman v. Mckenzie, at 255, supra, should have found the Assignments invalid in accordance with United States v. Dubilier Condenser Corp., at 186-9, supra, should have declared the titles to those Patents to be mine, and should have declared the royalties from licensing of those Patents to be mine. In any event the Amended Complaint constitutes a sufficient complaint in accordance with Conley v. Gibson, 1957, 355 U.S. 41 and the dismissal for failure to state the clain of my Amended Complaint by the District Court was totally groundless.

I, therefore, pray this Court to grant this Petition for a Writ of Certiorari which is my last legal remedy, otherwise I will suffer irreparable harm.

II. COURT OF APPEALS CAN NOT GRANT THE MOTION FOR DISMISSAL OF APPEAL WITHOUT CONSIDERING ESSENTIAL EVIDENCE TO THE CONTRARY WHICH HAS BEEN READILY AVAILUABLE TO THAT COURT OTHERWISE THAT COURT VIOLATES HUMAN RIGHTS OF THE APPELLANT

This appeal which was filed timely (a-12) had been dismissed on a nonexistant technicality contrary to the instructions of this Court to the Court of Appeals. Foman v. Davis, 1962, 371 U.S. at 181-2; Brown Shoe Co. v. United States, 1961, 370 U.S. 294, 306; Conley v. Gibson, 1957, 355 U.S. 41, 48.

Cotrary to the contention of Union Carbide that my appeal was premature, my appeal was timely. No proceedings on my Amended Complaint, which had been dismissed on July 11, 1984, was held in the District Court after the filing of my Notice of Appeal. My Notice of Appeal was filed August 28, 1984 after the entry of all of the District Court's Orders concerning the dismissal of my Amended Complaint (a-12). See District Court's Doket Entries A-3. Since the District Court

dismissed my entire Amended Complaint, this appeal is final and the dismissal of this appeal does not return this case to the District Court for continuation, because there is nothing to continue there. See the District Court's Docket Entries A-3. I did not receive a copy of judgment referred to by Union Carbide on page 4 of its memorandum in support of its motion for dismissal of my appeal (a-12). All the claims of my Amended Complaint were dismissed by the District Court's Order of July 10, 1984 (a-6) where the District Court found the patents containing my unpatented inventions to lack the controversy for purposes of a declaratory judgment (a-9), thus the claims to the se unpatented inventions had been dismissed July 10, 1984. No Act of Congress or any other statute gives the District Court jurisdiction to grant or dismiss a claim to the title of an unpatented invention.

I am respectfully requesting this Court to consider a number of authorities which

state that a mistake, if I committed one which I do not think I did, in filing a notice of appeal should not result in loss of the appeal. Foman v. Davis, 1962, 371 U.S. at 181-2, Brown Shoe Co. v. United States, 1961, 370 U.S. 294, 306, Conley v. Gibson, 1957, 355 U.S. 41, 48. Particularly applicable here is 9 Moores Federal Practice (2d Ed.) 203.18 (3-76) which states:

> "The rule is now well settled that a mistake in designating the judgment, or in designating a part appealed from if only a part is designated, should not result in loss of the appeal as long as the intend to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not misled by the mistake. Decisions to the contrary can no longer be regarded as authoritative."

This appeal is proper under 28 U.S.C. 1291 in accordance with the ruling of this Court in Cohen v. Beneficial Loan Corp., 1948, 337 U.S. 541, 546-7. As shown in my Affidavit which was submitted in opposition to Union Carbide's motion for dismissal of my appeal and which Affidavit was never filed by the Clerk of the Court of Ap-

peals, I was not permitted by the District Court to present my arguments on May 25, 1984 and on August 3, 1984 (a-13). This denial by the District Court of my human righ to present my arguments makes this District Court's decision final in accordance with Cohen, supra at 546.

The essential transcripts of District Court proceedings of May 25, 1984 and of August 3, 1984 (a total of 19 pages), during which proceedings I was not permitted to make my arguments, were ordered by me on August 27, 1984 (a copy of that order was send to the Clerk of the District Court) as Court of Appeals' Transcript Information Form D shows. These transcripts in spite of my efforts were never made part of the record on appeal. The motion to direct the Clerk of the Court of Appeals to obtain and to file these transcripts was mailed by me to the Clerk of the Court of Appeals on December 20, 1984. The Court of Appeals, the-

refore, ruled on the motion to dismiss my appeal on December 24, 1984 in the pendency of this motion to obtain these essential to this ruling transcripts.

The Court of Appeals did not therefore consider the essential evidence contained in my Affidavit (a-12), submitted to the Court of Appeals in opposition to Union Carbides motion to dismiss my appeal, and which Affidavit was not filed by the Clerk of the Court of Appeals and the essential evidence conteined in the transcripts of District Court's proceedings of May 25, 1984 and of August 3, 1984 which had been ordered by me but had not been included by the Clerk of the District Court into the record on appeal. This act of the Clerk of the District Court is contrary to Rules 10 (a) and 11(b) of F.R.A.P. By not considering this essential evidence, evidence which would not have permitted the Court of Appeals to dismiss my appeal, the Court of

Appeals violated my human rights. The District Court violated my human rights by refusing to hear my arguments on May 25, 1984 and on August 3, 1984 (a-13). The right of the litigant to be heard by the court is the human right universally respected by the courts of all the civilized countries. Therefore, if this Court does not grant this Petition for a Writ of Certiorari my human rights will irreparably be violated.

On the basis of these and the following facts this Court should grant this Petition for a Writ of Certiorari.

The Court of Appeals considered Union Carbide's motion for the dismissal of my appeal without the Notice of Appearence for any of Union Carbide's attorneys. See the Court of Appeals' Docket Entries.

The Clerk of the Court of Appeals by supplying me with the copy of that Court's Order of dismissal of my appeal (a-1) 15 days after that Order had been entered made

it impossible for me to file a timely Motion for Rehearing in accordance with Rule 59(e) of Federal Rules of Civil Procedure.

CONCLUSION

For all the foregoing reasons, I the petitioner respectfully request this Court to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

George L. Karapinka
Petitioner pro se

3557 Collins Ferry Road, B-14
Morgantown, West Virginia
26505

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Karapinka, plaintiff-appellant
v.
Union Carbide Corporation,
defendant-appellee

84-7916

Motion for Dismissal of the Appeal

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is granted.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED

DEC. 24 1984

Elaine B. Goldsmith, Clerk

x Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

x Amalva L. Kearse
Amalva L. Kearse, U.S.C.J.

12/24/84
Date

x Richard J. Cardamone
Richard J. Cardamone, U.S.C.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GEORGE L. KARAPINKA
Plaintiff

-against-

No. 83-CV-16
1682

UNION CARBIDE CORPORATION,
Defendant

APPEARANCES: OF COUNSEL:

GEORGE L. KARAPINKA
Plaintiff Pro Se
3557 Collins Ferry Road, B-14
Morgantown, West Virginia 26505

DeGRAFF, FOY, CONWAY, HOLT-HARRIS & MEALEY, ESQS.
Attorneys for Defendant
90 State Street
Albany, New York 12207

CARROLL J. MEALEY, ESQ
CHRISTOPHER MASSARONI, ESQ

LEYDIG, VOIT, OSANN, MAYER & HOLT, LTD.
Attorneys for Defendant
Suite 4600, One IBM Plaza
Chicago, Illinois 60611

C. FREDERICK LEYDIG, ESQ
CHARLES H. MOTTIER, ESQ.

ROGER J. MINER, D.J.

ORDER

I

Plaintiff, appearing pro se, commenced this action on December 19, 1983 alleging various causes of action against defendant Union Carbide relating to certain of his in-

ventions and discoveries, some of which had been patented by him. On March 30, 1984, this Court granted defendant's motion to dismiss, Fed. R. Civ. P. 12(b)(6), allowing thirty days in which to replead. On April 13, 1984, the Court denied from the bench plaintiff's motion for reconsideration of the March 30th Order and allowed plaintiff an additional thirty days to replead his complaint. Plaintiff then served and filed an "amended" complaint the same day. That complaint is the subject of the present motion.

II

Plaintiff's repleaded complaint alleges that while employed by defendant as a chemist, but independent from his employment duties, he discovered and patented certain inventions. In 1973, plaintiff apparently assigned one of those patents to defendant Union Carbide. Plaintiff had previously assigned other patents to Union Carbide in 1968 and 1971. The gravamen of plaintiff's

complaint is that these assignments were made "contrary to the decisions of the United States Courts, United States v. Dubilier Condensed (sic) Corp., 1932, 289 U.S. 178 at 186-189," since he was not hired to discover or patent those items. Moreover, plaintiff claims that he signed those assignments under threat of dismissal and did not receive consideration therefor. Finally, plaintiff claims that although he was told by company officials that he had a right to be recalled to work following his discharge in October of 1981, in fact he never was.

Plaintiff seeks a declaration that his assignments to Union Carbide are null and void and that title to those patents properly should vest in him. He also requests that defendant transfer to him "all the revenue and royalties (with appropriate interest), derived from licensing worldwide (his) inventions...."

III

Defendant Union Carbide moves this Court

for an order pursuant to Fed. R. Civ. P. 12 (b)(6) dismissing parts of plaintiff's complaint as well as for an order pursuant to Fed. R. Civ. P. 12(e) requiring plaintiff to provide a more definite statement regarding the remainin claims. Plaintiff moves for an order pursuant to Fed. R. Civ. P. 55 entering a default judgment in his favor. For the reasons set forth below, defendant's motions are granted in their entirety and plaintiff's motion is denied.

A. Default judgment

Plaintiff served and filed the present complaint on April 13, 1984. Defendant moved to dismiss the complaint, Fed. R. Civ. P. 12(b)(6), on May 7, 1984. Relying on Fed. R. Civ. P. 15, plaintiff seeks a default judgment based on defendant's failure to answer or otherwise move within ten days of service of the complaint. Plaintiff's motion must be denied for two reasons: First, plaintiff never requested that the clerk enter defendat's default. Fed. R. Civ. P. 55(a).

Default not having been entered, entry of default judgment is inappropriate. Second, and in any event, defendant's motion to dismiss was timely made. Because the present complaint is not an amended complaint governed by Fed. R. Civ. P. 15's ten day requirement for filing responsive pleading, but rather a repleaded complaint, defendant was entitled to twenty days in which to respond Fed. R. Civ. P. 12. Decause service of the complaint was effected by mail, defendant was entitled to an additional three days. Fed. R. Civ. P. 6. The twenty-third day following service of plaintiff's complaint fell on Sunday, May 6th. Rule 6 directs in such circumstances that filing will be timely if made on the next business day, in this case Monday, May 7th. Since defendant's response on May 7th was timely, plaintiff's application for default judgment must be denied.

B. Motion to dismiss

With respect to plaintiff's claims regarding the assignments of his patents, it is

clear that plaintiff seeks nothing more than rescision of those contracts based on allegations of duress, illegality or lack of consideration. Plaintiff has consistent ly adhered to his claim, despite repeated inquiries from the Court, that fraud on the part of defendant is neither in issue nor alleged in his complaint. Because plaintiff's action is founded upon a contract, see United States v. Dubilier Condenser Con 289 U.S. 178, 187 (1933) (assignment of patent is contractual in nature); Perma Research & Development Co. v. Singer Co., 402 F. Supp. 881 (S.D.N.Y. 1975), aff'd, 542 F.2d 111 (2d Cir.), cert. denied, 429 U.S. 987 (1976) (same), it is subject to a six-year statute of limitations. N.Y. Civ. Prac. Law § 213 (McKinney Supp. 1983-1984). Because the acts of which plaintiff complaints occured, and therefore his cause of action accrued, no later than January 19, 1973, see Amended Complaint, 6, those claims are ti-

me-barred.

Plaintiff's continued relience on the decision in United States v. Dubilier Condenser Corp., 289 U.S. 178 (1933) is simply misplaced. That decision holds only that while one employed to make an invention in the service of his employer is "bound to assign to his employer any patent obtained," 289 U.S. at 187, one whose employment is "general" is not so required. Id. The decision does not preclude an employee from entering into an independent contract with his employer for the assignment of a patent See id. at 187-88 (a "'corporation which has employed a skilled workman, for a stated compensation, to take charge of its works, and to devote his time and services to devising and making improvements in articles there manufactured, is not entitled to a conveyance of patents obtained for inventions made by him while so employed, in the absence of express agreement to that effect

(emphasis added) (quoting Dalzell v. Deuber Watch Case Manufacturing Co., 149 U.S. 315, 320 (1893)).

With respect to that portion of plaintiff's complaint seeking a declaration that defendant's patents are invalid, such claim cannot be maintained since defendant has not accused plaintiff of patent infringement, Walker Process Equipment, Inc. v. FMC Corp. 356 F.2d 449, 451 (7th Cir.) cert. denied, 385 U.S. 824 (1966), and there is therefore no controversy for purpose of declaratory judgment.

c. Motion for a more definite statement

With respect of what remains of plaintiff's repleaded complaint, and that is not at all clear, the Court is constrained to grant defendant's 12(e) motion, and hereby directs plaintiff to provide a more definite statement regarding what appears to be claims against defendant for patent infringement. If, as the Court suspects, the complaint contains no claims other than those

seeking rescissins of the assignments and a declaration of patent invalidity, needless to say the complaint will be subject to dismissal in its entirety with prejudice. Further repleading will not be permitted, plaintiff now having had more than ample opportunity to present any viable claims he may have.

IV

For the forgoing reasons, plaintiff's motion for default judgment is denied. Defendant's to dismiss those claims relating to the assignment of plaintiff's patents and to a declaration of patent invalidity is granted. Similarly, defendant's motion for a more definite statement with respect to any remaining claims also is granted and plaintiff is directed to provide such a statement within thirty days after the date of this Order.

It is so ordered.

Dated: July 10, 1984
Albany, New York

x Roger J. Miner
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GEORGE L. KARAPINKA, Plaintiff	COPY
v.	C.A. No. 83-CV-1682
UNION CARBIDE CORPORATION, Defendant	Hon. Roger J. Miner

U.S. DISTRICT COURT
N.D. OF N.Y.

FILED

AUG 15 1984
AT ___ O'CLOCK ___.M.
J.R. SCULLY, Clerk
ALBANY

ORDER

Plaintiff having moved for reconsideration of this Court's ruling of July 10, 1984, and the matter having been fully briefed and having come on for hearing before this Court on August 3, 1984;

IT IS HEREBY ORDERED that the plaintiff's motion for reconsideration is denied.

Dated: Aug 13, 1984

x Roger J. Miner
United States District Judge

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

GEORGE L. KARAPINKA, Appellant vs. UNION CARBIDE CORPORATION, Appellee	)	No. 84-7916

AFFIDAVIT OF GEORGE L. KARAPINKA

State of West Virginia)
County of Monongalia)

George L. Karapinka of full age being duly sworn upon his oath, deposes and says

1. I make this Affidavit in opposition to Motion of Defendant-Appellee Union Carbide Corporation for Dismissal of the Appeal for Lack of Jurisdiction

2. My Notice of Appeal was filed and entered on the Docket in the U.S. District Court for the Northern District of New York on August 28, 1984, NR 35, after the entry of all the District Court's Orders. See the attached Exhibit.

3. I did not receive a copy of the judgment referred to by Union Carbide Corporation on page 4 of it's memorandum in

support of this Motion.

4. My appeal's fee of $70.00, $5.00 filling fee and $65.00 docketing fee was paid on August 28, 1984. The transcripts of District Court's proceedings on May 25, 1984 and on August 3, 1984 were ordered on August 27, 1984.

5. On November 9, 1984, the argument day on my Motion for the Order Directing the Clerk of the United States District Court Albany, N.Y. to Transmit the Notice of Appeal to United States Court of Appeal for the Second Circuit in accordance with Rule 3(d) of Federal Rules of Civil Procedure, I was told by the District Court that my appeal was in order in the Second Circuit. The Motion was dismissed without prejudice, as moot.

6. During my argument in opposition to Union Carbide Corporation's Motion Under Rule 12(b)(6) for Partial Dismissal of the Amended Complaint and for a More Definite

Statement under Rule 12(e) on May 25, 1984 I was interrupted and not permitted by the District Court to complete my argument.

7. During my argument in support of my Motion to Reconsider District Court's Judgment of July 10, 1984 on August 3, 1984 I was interrupted and not permitted by the District Court to complete my argument.

x George L. Karapinka

George L. Karapinka

Sworn and subscribed
before me this 4th day
of December, 1984

x G. Gayle McBee

Official Seal
NOTARY PUBLIC
State of West Virginia
G. GAYLE McBEE
c/o The First National Bank of Morgantown
P.O. Box 853
Morgantown, WV 26507
My Commission Expires Sept. 7, 1994

Office - Supreme Court, U.S.
FILED
MAY 21 1985
ALEXANDER L. STEVAS,
CLERK

(2)

No. 84-1482

In the Supreme Court of the United States

October Term, 1984

GEORGE L. KARAPINKA,
Petitioner pro se

v.

UNION CARBIDE CORPORATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

C. FREDERICK LEYDIG
One IBM Plaza—Suite 4600
Chicago, Illinois 60611
(312) 822-9666
Attorney for Respondent

Of Counsel:

CHARLES H. MOTTIER
LEYDIG, VOIT, OSANN, MAYER & HOLT, LTD.

Bowne of Chicago, Inc. — Chicago
Printed in U.S.A.

BEST AVAILABLE COPY

26 pp

TABLE OF CONTENTS

	Page
Table of Contents	i
Designation of Corporate Relationships	ii
Table of Authorities	iv
Statutory Provisions	vi
Index of Abbreviations	vii
Foreword	1
Opinions of the Courts Below and Review of Pertinent Prior Proceedings	2
Supplemental Citations to Decisions Below	5
Summary Statement of the Case	5
Argument	7
The Assignment Documents In Question Are Contracts Subject to the New York Statute of Limitations	7
The Petitioner Has Been Given a Full and Fair Opportunity to Present His Claims	10
The Dismissal of Petitioner's Appeal Was In Accord With Accepted Judicial Procedures	12
Conclusion	13
Service	14

Supplemental Appendix

A. Order of the District Court of August 28, 1984, Dismissing Petitioner's Amended Complaint With Prejudice	SA-1
B. Order of the Court of Appeals of March 20, 1985, Denying Appellant's Petition for Rehearing	SA-3

DESIGNATION OF CORPORATE RELATIONSHIPS

Pursuant to Rule 28.1 of the Rules of the Supreme Court, the following is a listing naming all subsidiaries (except wholly-owned subsidiaries), and affiliates of Respondent Union Carbide Corporation: Arizona Welding Equipment Co.; Bayox Inc.; Colombia Welding Products, Inc.; Miami Welding Supply, Inc.; ACM Services, Inc.; Carbographite Limited; Chrome Corporation (South Africa) (Proprietary) Limited; Elektrode Maatskapy Van Suid Africa (Eiendoms) Beperk; Zimbabwe Mining and Smelting Company (Private) Limited; Karaj Road Property Company Limited; Ucar Plastics (Ghana) Limited; Union Carbide Egypt S.A.E.; Union Carbide Ghana Limited; Union Carbide Kenya Limited; Union Carbide Nigeria Limited; Union Carbide Sudan Limited; Union Carbide Yemen Ltd.; Carbide Hashim Industrial Gas Company; Tubatse Ferrochrome (Proprietary) Limited; P.T. Agrocarb Indonesia; Chemos Industries Pty. Limited; Delvan Pty. Limited; Joint Industries (HYCEL) 1970 Limited; P.T. Karmi Arafura Fisheries; Nippon Unicar Company Limited; Sony-Eveready Inc.; Union Carbide Australia & New Zealand Limited; Union Carbide Australia Limited; Union Carbide Ceylon Limited; Union Carbide Formosa Co., Ltd.; Union Carbide India Limited; Union Carbide Malaysia Sdn. Bhd.; Union Carbide New Zealand Limited; Union Gas Company Limited; Union Polymers Sdn. Bhd.; Union Showa K.K.; Nepal Battery Company, Ltd.; Dai Nippon Jushi Company Ltd.; Eveready Hong Kong Company; Sankyo Plastics Company Limited; Wako Jushi Company Limited; Argon, S.A.; Calida Gas B.V.; Indugas N.V.; La Littorale S.A.; Skandinaviska Polypropane A/B; Unifos Chimie France; Unifos G.m.b.H.; Unifos Kemi A/S; Unifos Kemo Norsk A/S; Unifos U.K. Limited; Union Carbide France, S.A.; Union Carbide Iberica, S.A.; Compania Navarra del Oxigeno S.A.; Oxigeno Del Norte, S.A.; Oy Unifos A.B.; Societe Civile des Produits Lifine;

Eletro Manganes Ltda.; Eletrometalurgica Saudade Ltda.; Oxigenio Edy S.A.; Union Carbide Argentina, S.A.I.C.S.; Sociedad Anonima White Martins; S.A. White Martins Nordeste; Celbras-Emprese Brasileira de Cilindros Limitada; Incarmex, S.A. de C.V.; Nitropet, S.A.; Servicios DYC, S.A. de C.V.; Unicarb Industrial, S.A. de C.V.; Union Carbide Mexicana, S.A.; Administracion y Servicios Carmex, S.A. de C.V.; Servicios Administrataivos Carmex, S.A. de C.V.; Niject Services Company; Welnite Company; Petromont and Company Limited; Eveready Hong Kong Company.

TABLE OF AUTHORITIES

Cases	Page
Beghin-Say International, Inc. v. *Ole-Bendt Rasmussen*, 733 F.2d 1568 (Fed. Cir. 1984)	8
Clark v. *United States*, 624 F.2d 3 (2d Cir. 1980)	12
Cohen v. *Beneficial Industrial Loan Corporation*, 337 U.S. 541 (1949)	12
Crown Die & Tool Co. v. *Nye Tool & Machine Works*, 261 U.S. 24 (1923)	10
Federal Communications Commission v. *Station WJR*, 337 U.S. 265 (1949)	11
Guarantee Trust Company v. *York*, 326 U.S. 99 (1945)	8
Martin v. *Julius Dierck Equipment Co.*, 43 N.Y. 2d 583, 374 N.E. 2d 97 (1978)	9
McAleer v. *United States*, 150 U.S. 424 (1893)	8
Perma Research & Development Co. v. *Singer Co.*, 402 F. Supp. 881 (S.D. N.Y. 1975)	8
United States v. *Dubilier Condenser Corp.*, 289 U.S. 178 (1933)	7, 9, 10
United States v. *Taylor*, 632 F.2d 530 (5th Cir. 1980)	12

Statutes *Page*

Title 28 of the United States Code, as amended:
28 U.S.C. § 1291 4

New York Civil Practice Law
Section 213 (McKinney Supp. 1983-84)..... 8

Rules

Rule 12(b)(6), Federal Rules of Civil Procedure..... 2, 3, 4

Rule 12(e), Federal Rules of Civil Procedure..... 2, 3

Rule 54(b), Federal Rules of Civil Procedure..... 12

STATUTORY PROVISIONS

28 U.S.C. § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

N.Y. Civil Practice Law § 213 (McKinney Supp. 1983-84).

> Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud

The following actions must be commenced within six years:

> 1. an action for which no limitation is specifically prescribed by law;
>
> 2. an action upon a contractual obligation or liability express or implied, except as provided in section two hundred thirteen-a of this article or article 2 of the uniform commercial code;*
>
> 3. an action upon a sealed instrument;
>
> 4. an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein;

* § 213-a provides that actions based on a residential rent overcharge shall be commenced within four years of the overcharge.

5. an action by the state based upon the spoliation or other misappropriation of public property; the time within which the action must be commenced shall be computed from discovery by the state of the facts relied upon;

6. an action based upon mistake;

7. an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty of forefeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith.

8. an action based upon fraud; the time within which the action must be commenced shall be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

INDEX OF ABBREVIATIONS

The following abbreviations are used in this Brief:

A— The Appendix to the Petition, page —.

SA— The Supplemental Appendix, which is bound with this Brief in Opposition to Petition for Certiorari, page —.

No. 84-1482

In the
Supreme Court of the United States

October Term, 1984

GEORGE L. KARAPINKA,
Petitioner pro se

v.

UNION CARBIDE CORPORATION,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

FOREWORD

To The Honorable Chief Justice
and Associate Justices of the
Supreme Court of the United States:

The Petitioner has presented two questions for review by this Court. The first of these questions relates to the applicability of the New York statute of limitations to two documents assigning Petitioner's rights to the inventions disclosed and claimed in the patent applications which eventuated as U.S. Patents 3,709,853 and 3,756,998.

The second question implies that the dismissal entered in this case by the court of appeals violated Petitioner's right to be heard because the court failed to consider "essential evidence to the contrary." This question is specious in the context of the matters on appeal and seeks to combine—as one issue—two unrelated matters.

The Petitioner's second question is more easily understood if separated into the following two component parts:

1. Whether Petitioner was given a full and fair opportunity to present his claims; and

2. Whether the appellate court properly dismissed the Petitioner's appeal for lack of jurisdiction.

These questions, while certainly important to Petitioner, do not justify the grant of a writ of certiorari. The legal principles which govern the decisions at issue here have been well established by this Court and the federal courts generally for many years. Nor, as explained below, can it be said that the decisions rendered in this case are in conflict with those of other federal courts. Under these circumstances, there is no reason, and particularly no "special and important" reason, for review on writ of certiorari.

OPINIONS OF THE COURTS BELOW AND REVIEW OF PERTINENT PRIOR PROCEEDINGS

The original complaint in this case asserted various causes of action against Union Carbide Corporation relating to certain of Petitioner's inventions and alleged discoveries made while Petitioner was employed by Respondent. On February 8, 1984, in response to this complaint, Respondent filed its first motion for partial dismissal under Rule 12(b)(6) and for a more definite statement under Rule 12(e), Fed. R. Civ. P. On March 30, 1984, after hearing argument on Respondent's motion, the district court dismissed the complaint and allowed Petitioner thirty days in which to replead. Petitioner then filed a

motion and memorandum requesting reconsideration of the March 30 Order. That motion was denied from the bench on April 13, 1984. Petitioner then served and filed an "amended" complaint that same day. An additional pleading was filed shortly thereafter to correct several omissions and typographical errors.

The Petitioner's second complaint continued to aver that two assignment documents relating to U.S. Patents 3,709,853 and 3,756,998 are null and void, and that seven other patents owned by Respondent are invalid. The assignments in question, dated December 12, 1968, and May 26, 1971, respectively, conveyed Petitioner's rights to inventions made during the course of his employment to his then employer Union Carbide Corporation.

On May 7, 1984, Respondent filed its second motion under Rules 12(b)(6) and 12(e). That motion was presented to the district court on May 25, 1984, at which time the court heard argument and questioned Petitioner regarding his repleaded claims. An Order and opinion subsequently issued on July 10, 1984, in which the court dismissed certain claims and directed Petitioner to provide a more definite statement with respect to any remaining claims within thirty days. (See A2.) More specifically, the Order dismissed those claims of the second complaint relating to the assignment of Petitioner's inventions in view of New York's six year statute of limitations, which was held to be applicable to the assignment documents. In addition, the district court held, after making repeated inquiries of plaintiff, that fraud on the part of defendent was neither in issue nor alleged in the complaint. With regard to that portion of the second complaint seeking a declaration that Respondent's patents are invalid, the district court found there to be no controversy for purposes of a declaratory judgment with respect to the validity of any patent because Petitioner had not been accused of patent infringement.

On July 17, 1984, Petitioner filed a motion and memorandum for reconsideration of the district court's Order of July 10. Petitioner's motion for reconsideration was denied by Order dated August 13, 1984. (See All.) That Order, and the Order of July 10, are the subject of the Notice of Appeal which was submitted to the clerk of the district court by letter dated August 21.

On July 30, 1984, the Respondent filed a further motion to dismiss under Rule 12(b)(6). That motion was based upon an admission by Petitioner that he could not provide a more definite statement of his remaining claims in accordance with the district court's Order of July 10.

The hearing on Respondent's third motion to dismiss was held on August 10, 1984. The Petitioner did not appear in opposition to the motion, nor did he file a more definite statement as directed by the district court. At the conclusion of the hearing, the Respondent's motion to dismiss was granted and the second complaint was dismissed in its entirety with prejudice. The Order embodying that ruling was signed by the district judge on August 28, 1984, and filed that same day. (See SA1.) Also on August 28, the clerk of the district court docketed the Notice of Appeal mentioned above, which is the only Notice of Appeal to be filed in this case. Judgment was entered on September 21, 1984.

In the fall of 1984, Petitioner perfected his appeal to the Court of Appeals for the Second Circuit and Respondent moved promptly to dismiss on the grounds that the Orders appealed from lacked the requisite finality to be appealable within the meaning of 28 U.S.C. § 1291. Petitioner filed his brief in opposition to this motion on December 4, 1984, and on December 24, the court below dismissed the appeal. (See A1.) Petitioner then filed and briefed a motion for rehearing, which was denied on March 20, 1985. (See SA3.) The present Petition for Writ of Certiorari was docketed on March 21, 1985.

SUPPLEMENTAL CITATIONS TO DECISIONS BELOW

The majority of the pertinent opinions and decisions of the lower courts are appended to the Petition for Writ of Certiorari. Those opinions, however, should be supplemented by the district court's Order dismissing, with prejudice, the Petitioner's second complaint, and the Order of the court of appeals denying Petitioner's motion for rehearing. These decisions are printed in the Supplemental Appendix to this Brief.

SUMMARY STATEMENT OF THE CASE

The foregoing review of the proceedings in this case to date, with particular reference to Petitioner's efforts to present his arguments to the district and appellate courts, sets forth the facts pertinent to the present Petition.

Petitioner, plaintiff below, has sought at every stage of this litigation to flavor his case with vague references to purported fraud on the part of Respondent and has made baseless allegations that the district and appellate courts refused to hear his claims. The thrust of Petitioner's arguments here is that he wrongly assigned two of his inventions to Respondent, and that the lower courts have violated his "human rights" by denying him the opportunity to present his case.

As evidenced by the present Petition, Mr. Karapinka has consistently coupled his allegations with completely unsupported conclusory statements that are unnecessary to the proper resolution of this case. For example, Petitioner continues to make allusions to fraudulent conduct in connection with the assignment of his inventions to Respondent, even though the district court explicitly held that Petitioner's claims sought nothing more than rescission of

those agreements based on allegations of duress, illegality or lack of consideration, and that fraud is neither in issue nor alleged in the amended complaint.

Moreover, contrary to what the Petition seems to suggest, the appellate court did not reach the merits of the district court's decision in dismissing Petitioner's appeal, nor was it necessary for the appellate court to review Petitioner's allegations that he was precluded from presenting his arguments to the district court. The dismissal entered by the appellate court was based entirely on the fact that it lacked jurisdiction to hear the appeal because the Orders appealed from were neither certified nor final.

Despite the very considerable attention which has been accorded the Petitioner's claims, Petitioner nevertheless asks this Court to consider whether his "human rights" have been violated. Petitioner also asks this Court to review the remuneration that should properly be given to employed inventors for the assignment of their inventions. These questions raise issues that go far beyond the facts or pleadings of this case; and their resolution was not involved in the rulings which are the subject of the present Petition.

ARGUMENT

I. The Assignment Documents In Question Are Contracts Subject To The New York Statute of Limitations

In the section of his Petition relating to the assignment documents, Petitioner raises three distinct points, only one of which is properly at issue here. First, the Petitioner argues that the assignments in question are not contracts and that the New York statute of limitations relating to actions based on contract cannot be applied to bar his claims.

Second, Petitioner alleges that the inventions which he conveyed to Respondent were developed outside of his employment and that he was under no obligation to assign them to his employer. Third, Petitioner claims that inventors in the United States are not realistically compensated for their inventions, which, he believes, has resulted in a decline in the ability of the United States to compete with industries in foreign countries. To reverse this trend, Petitioner asks this Court to "reinterpret" its prior ruling in *United States* v. *Dubilier Condenser Corp.*, 289 U.S. 178 (1933), so as to give Petitioner title to the inventions he assigned to Respondent in 1968 and 1971.

These last two points form no part of the district court's judgment; nor was consideration of these points necessary to the dismissal of the appeal. Petitioner is therefore asking this Court to vacate the judgments of two lower courts and to enter judgment in his favor based on issues which are unrelated to the decisions of the courts below.

In dismissing Petitioner's claims relating to the assignment documents, the district court held that Petitioner's action is based on principles of contract. The court also

held that Petitioner's claims are subject to New York's six year statute of limitations relating to contract actions. N.Y. Civ. Prac. Law § 213 (McKinney Supp. 1983-84). The acts of which Petitioner complains occurred and his cause of action accrued no later than September 4, 1973, the latest date appearing in the amended complaint. The district court therefore properly dismissed the Petitioner's claims—embodied in his complaint of April 13, 1984—as time barred.

Underlying this decision, of course, is the district court's determination that the assignments in question are contracts. Such finding is in accord with longstanding legal precedent. In *McAleer* v. *United States,* 150 U.S. 424, 431 (1893), this Court held that an assignment by a patentee of the right to make and use machines containing the improvements claimed in his patent constitutes a contract, and embodies a complete legal obligation. More recently, assignments of patent rights were called contracts—and treated as contracts—in *Beghin-Say International, Inc.* v. *Ole-Bendt Rasmussen,* 733 F.2d 1568 (Fed. Cir. 1984), and *Perma Research & Development Co.* v. *Singer Co.,* 402 F. Supp. 881 (S.D. N.Y. 1975), *aff'd,* 542 F.2d 111 (2d Cir. 1976).

It is equally clear that the assignments at issue here are subject to the New York statute of limitations. In *Beghin-Say,* 733 F.2d at 1570-71, the Court of Appeals for the Federal Circuit held that an action to declare an assignment of two U.S. patent applications to be valid is *not* a federal question but sounds exclusively in contract and is cognizable in state courts. Under this Court's ruling in *Guarantee Trust Company* v. *York,* 326 U.S. 99, 108-109 (1945), a federal district court whose jurisdiction is based on diversity of citizenship is bound to apply the statute of limitations a court of the forum state would apply. Because the New York statute of limitations is procedural, since it goes to the remedy rather than the right, New York courts

will apply their own statute of limitations even though the wrong which gave rise to the action may have occurred in another state. *Martin* v. *Julius Dierck Equipment Co.*, 43 N.Y. 2d 583, 588, 374 N.E. 2d 97, 99 (1978).

Petitioner's primary citation relating to this point, *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U.S. 24 (1923), is totally inapposite. In that case, suit was brought on a patent by an assignee who only had the right to sue for damages for past infringement. This Court held that the assignee had no right to bring suit. The right to sue, at that time, was governed by R.S. § 4919, which read in pertinent part:

> Damages for the infringement of any patent may be recovered by action on the case, in the name of the party interested, either as a patentee, assignee, or grantee.

In *Crown Die*, there was no dispute that the contract in question was an assignment of only the right to sue for past infringement. *Crown Die* involved the effect of a statute on an unchallenged assignment of a right to sue on a patent. Though the Court in *Crown Die* referred to the validity of a patent assignment as a matter arising under the patent laws, that reference cannot be read out of context. Petitioner here is not suing on a patent and is not claiming a right to sue based on an assignment from the patent owner; instead, the Petitioner is requesting that the assignment documents be rescinded. The present suit is simply a contract action. The New York statute of limitations consequently applies to bar Petitioner's claims, and his arguments to the contrary are ill-conceived.

Petitioner's reliance on the decision in *United States* v. *Dubilier Condenser Corp.*, 289 U.S. 178 (1933), is also

misplaced. That decision holds only that while one employed to make an invention in the service of his employer is "bound to assign to his employer any patent obtained," *Dubilier Condenser,* 289 U.S. at 187, one whose employment is "general" is not so required. *Id.* The decision does not preclude an employee from entering into an independent contract with his employer for the assignment of a patent. Viewed in this light, it is irrelevant whether Petitioner was subject to a formal employment agreement during the course of his employment with Respondent Union Carbide Corporation. The two assignment contracts which form the basis of Petitioner's cause of action constitute independent contracts which conveyed to Respondent Petitioner's rights to the patent applications which eventuated as U.S. Patents 3,709,853 and 3,756,998. Under these circumstances, a review of this Court's ruling in the *Dubilier* case is uncalled for and does not justify the grant of a petition for writ of certiorari.

II. The Petitioner Has Been Given A Full and Fair Opportunity To Present His Claims

The same arguments which are now before this Court were made repeatedly and extensively below. Notwithstanding Petitioner's assertions to the contrary, the district court carefully considered Petitioner's claims. Those claims were reviewed against a background of the case as a whole, and in the context of three motions to dismiss and two motions for a more definite statement. Petitioner filed numerous briefs in the district court, and personally appeared before the court on no fewer than four separate occasions, during which time the trial judge repeatedly inquired into the nature of Petitioner's claims. This history does not suggest that Petitioner was denied an opportunity to be heard.

As to Petitioner's allegation that he was interrupted by the district court on two separate occasions, it is well

settled that due process does not require oral argument on every question, no matter how substantial. *Federal Communications Commission* v. *Station WJR,* 337 U.S. 265, 275-76 (1949). An examination of the written record in this case should persuade the Court that the trial judge was well advised of the rulings the Petitioner desired.[1] Looking more specifically at the circumstances of the case at bar, we submit that the two "interruptions" cited in the Petition were merely occasioned by the repetitious nature of the Petitioner's argumentation. The "interruptions" do not suggest that Petitioner was denied a right to be heard, and certainly do not rise to the level of a "human rights" violation as Petitioner now contends.

Petitioner also argues that his right to be heard was violated by the court of appeals because that court failed to consider evidence in the form of transcripts of the district court proceedings "which would not have permitted the Court of Appeals to dismiss my appeal." Here, Petitioner's argument is confused and confusing. Petitioner seems to imply that the decisions of the lower courts were adverse simply because certain so-called evidence was not considered. Based on this circuitous reasoning, Petitioner now asks this Court to vacate the judgments below. However, the "essential evidence" that Petitioner claims was unavailable to the lower courts was either cumulative, and thus had already been considered, or was irrelevant to the issues presented.

---

[1] Respondent understands that the Petitioner has undertaken to provide ten copies of the Appendix, as prepared for use in the Court of Appeals below, to this Court for its use in connection with the present Petition.

III. The Dismissal of Petitioner's Appeal Was In Accord With Accepted Judicial Procedures

Petitioner contends that his appeal to the Court of Appeals for the Second Circuit was dismissed on a "non-existent technicality" contrary to the ruling of this Court in *Cohen* v. *Beneficial Industrial Loan Corporation,* 337 U.S. 541 (1949).[2] While one cannot be certain just what ruling Petitioner refers to, it is very clear that the dismissal of Petitioner's appeal was in accord with the long-standing requirement that all appeals be taken from a final judgment.

Petitioner filed his Notice of Appeal from the district court's denial of his motion for reconsideration and from the July 10 Order dismissing two claims of the second complaint and granting plaintiff leave to provide a more definite statement with respect to any remaining claims within thirty days. The Orders appealed from are therefore interlocutory rather than final because they did not dismiss all the claims of the second complaint and did not terminate the action. Nor were these decisions certified in accordance with Rule 54(b), Fed. R. Civ. P., for the purposes of an appeal. *See Clark* v. *United States,* 624 F.2d 3, 4 (2d Cir. 1980). Furthermore, the final judgment entered by the district court does not retroactively validate Petitioner's premature Notice of Appeal. *United States* v. *Taylor,* 632 F.2d 530, 531 (5th Cir. 1980).

---

[2] In *Cohen,* the Court recognized the appealability of an order dealing with the posting of security pending litigation, stating:

> We hold this order appealable because it is a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it.

337 U.S. at 546-47. Here, the Orders from which Petitioner sought appeal are not collateral.

In the context of this litigation, adherence to the rule requiring that an appeal be taken from a final judgment is particularly appropriate. Given the elusive nature of Petitioner's claims, it would be unfair to Respondent if fewer than all claims were heard on appeal, since Petitioner might conceivably elect to present his unappealed claims in another form, in another forum, for further consideration.

It is important to note that in dismissing the Petitioner's appeal, the court of appeals did not need to reach the merits of the district court's decision. Petitioner's argument that his human rights have been violated because the appellate court failed to consider certain transcripts of the trial court proceedings thus rings particularly hollow, and certainly does not justify review on writ of certiorari.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

C. FREDERICK LEYDIG
One IBM Plaza—Suite 4600
Chicago, Illinois 60611
(312) 822-9666
Attorney for Respondent

Of Counsel:

CHARES H. MOTTIER
LEYDIG, VOIT, OSANN, MAYER
& HOLT, LTD.

SERVICE

Service of this Respondent's Brief in Opposition to Petition for Certiorari has been made upon Petitioner by mailing three copies to Mr. George L. Karapinka, 3557 Collins Ferry Rd., B-14, Morgantown, West Virginia 26505, this 21st day of May, 1985.

Attorneys for Respondent

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GEORGE L. KARAPINKA
Plaintiff,

v.

UNION CARBIDE CORPORATION,
Defendant.

C.A. No. 83-CV-1682
Hon. Roger J. Miner

ORDER

Plaintiff, appearing *pro se,* commenced this action on December 19, 1983, alleging various causes of action against defendant Union Carbide Corporation relating to certain of his inventions and alleged discoveries, some of which had been patented by him. On March 30, 1984, this Court granted defendant's motion to dismiss under Rule 12(b)(6), Fed. R. Civ. P., and granted plaintiff leave to replead within 30 days. On April 13, 1984, the Court denied from the bench plaintiff's motion for reconsideration of its Order of March 30, and granted plaintiff an additional 30 days in which to replead. Plaintiff then served and filed an "amended" complaint that same day.

This amended complaint was the subject of a second motion to dismiss filed May 7, 1984. The defendant also moved for a more definite statement under Rule 12(e), Fed. R. Civ. P., as to those claims relating to what plaintiff refers to as his "unpatented inventions". On July 10, 1984, the Court granted the defendant's motion and dismissed those claims of the amended complaint relating to the assignment of plaintiff's inventions, and directed plaintiff to provide a more definite statement of the remaining claims

within 30 days. On July 30, 1984, defendant filed a further motion to dismiss under Rule 12 (b)(6). That motion is presently before the Court and is based upon an admission from plaintiff that he cannot provide a more definite statement of his "unpatented inventions" than that supplied in paragraph 11 of the amended complaint, which the Court has found to be inadequate.

The hearing on defendant's third motion to dismiss was held on August 10, 1984. The plaintiff did not appear in opposition to the motion, nor did he file a more definite statement as directed by the Court's Order of July 10. The defendant's motion is therefore granted. Further, the amended complaint is dismissed in its entirety with prejudice, plaintiff now having had more than ample opportunity to present any viable claims he may have.

It is so Ordered.

Dated: August 28, 1984

/s/ Roger J. Miner
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of March one thousand nine hundred and eighty-five.

Present:

HON. THOMAS J. MESKILL,

HON. AMALYA L. KEARSE,

HON. RICHARD J. CARDAMONE,

Circuit Judges,

GEORGE L. KARAPINKA,
Plaintiff-Appellant,

v.

UNION CARBIDE CORPORATION,
Defendant-Appellee.

No. 84-7916

A petition for a rehearing having been filed herein by plaintiff-appellant, George L. Karapinka, pro-se, Upon consideration thereof, it is Ordered that said petition be and it hereby is DENIED.

ELAINE B. GOLDSMITH, Clerk

Office - Supreme Court, U.S.
FILED
JUN 3 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1482

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1984

GEORGE L. KARAPINKA,

Petitioner

vs.

UNION CARBIDE CORPORATION,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

SUPPLEMENTAL BRIEF

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road, B-14
Morgantown, West Virginia 26505
(304) 599-8686

PRELIMINARY STATEMENT AND SUPPLEMENTAL QUESTION

This Supplemental Brief contains the facts which are essential to my Petition for a Writ of Certiorari, facts which have been obtained from the record of the U.S. Court of Appeals for the Second Circuit (No. 84-7916) on April 22, 1985 and from the record of the U.S. District Court for the Northern District of New York (No. 83-CV-1682) on May 24, 1985. My Petition for a Writ of Certiorari was docketed on March 21, 1985.

Whether the Docket Entries No. 84-7916 in the U.S. Court of Appeals for the Second Circuit show that my human rights were violated by the U.S. Court of Appeals.

TABLE OF CONTENTS

	Page
Statutory Provisions	1
Supplemental Statement of the Case .	1
Supplemental Argument	5
Conclusion	7

SUPPLEMENTAL APPENDIX

Receipt of the Mandate by the District Court	sa-1
Docket Entries of the U.S. Court of Appeals for the Second Circuit ..	sa-2
Order of the Court of Appeals; Dated March 20, 1985	sa-4
Affidavit of George L. Karapinka; Dated January 9, 1985	sa-6

TABLE OF AUTHORITIES

Federal Rules of Civil Procedure

Rule 59(e)	1,4

Federal Rules of Appellate Procedure

Rule 40(a)	1,4

STATUTORY PROVISIONS

Rules

Rule 59(e) of Fed. R. Civ. P.: A motion to alter or amend the judgment shall be served no later than 10 days after the entry of the judgment.

Rule 40(a) of Fed. R. App. P.:A petition for rehearing may be filed within 14 days after entry of the judgment (Relevant part)

SUPPLEMENTAL STATEMENT OF THE CASE

The Petition for a Writ of Certiorari was docketed in this Court on March 21, 1985.

By the letter of March 30, 1985, the copy of which had been sent to the Clerk of this Court, I requested the Clerk of the Court of Appeals for the Second Circuit to forward to this Court the Appendix to the briefs and the Docket Entries No. 84-7916 of the Court of Appeals for the Second Circuit in accordance with Rule 19.1 of the Rules of this Court. By the letter of April 15, 1985 I was notified by the Clerk of the Court of Appeals for the Second Circuit

that the requested Appendix and the Docket Entries will not be forwarded to this Court unless they are requested by the Clerk of this Court. In my letter of May 3, 1985 I requested the Clerk of this Court to request the Clerk of the Court of Appeals to forward to this Court the Appendix and the Docket Entries. These documents are essential to the understanding of my Petition for a Writ of Certiorari because of the several references in it to the Appendix and to the Docket Entries.

On April 22, 1985 during my examination of the record in this case in the Court of Appeals for the Second Circuit No. 84-7916 I found the receipt of the mandate from the District Court. See sa-1*. This document with the Docket Entry of 1-3-85 (see sa-2,3): "Issued certified copy of order dated 12/24/84" shows that the mandate has been issued on January 3, 1985.

---

* supplemental appendix - page, below

Further examination of the Docket Entries showed that the supplemental record, consisting of the essential to my appeal transcripts of the proceedings of the District Court on May 25, 1984 and on August 3 1984, had been filed in the Court of Appeals on 1-11-85, that is seven days after the issuance of the mandate. See sa-2,3.

My Motion for Rehearing was docketed 1/15/85 as the petition for rehearing. See sa-2,3. This Motion was my response to the Order of 12/24/84 of the dismissal of my appeal; the copy of that Order was received by me on January 8, 1985. See sa-6.

The last Docket Entry of 3-20-85 reads: "Order denying appellant KARAPINKA petition for rehearing filed" (sa-2,3). This Order was signed only by the Clerk of the Court of Appeals. See sa-4,5. This fact shows that my Motion for Rehearing was untimely because it was filed 22 days after the filing of the Order of dismissal of the appeal and

was therefore untimely under Rule 59(e) of Fed. R. Civ. P. or under Rule 40(a) of Fed. R. App. P. The clerk of the court of appeals does not have the authority to deny the motion for rehearing or the petition for rehearing on it's merits. This Order was received by me on March 27, 1985.

On May 24, 1985 my examination in the District Court of the judgment which had been entered September 21, 1984, the copy of which I had never received (see the Petition for Writ of Certiorari on a-12) showed that it consisted of one sentence stating that the action was dismissed with prejudice pursuant to Rule 12(b)(6) of F.R.C.P. This judgment was based on the District Court's Orders which were entered before my Notice of Appeal was entered on August 28, 1984 and this judgment was signed by a deputy clerk.

SUPPLEMENTAL ARGUMENT

THE DOCKET ENTRIES No. 84-7916 OF THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT SHOW THAT MY HUMAN RIGHTS WERE VIOLATED BY THE U.S. COURT OF APPEALS

The Docket Entries of the U.S. Court of Appeals for the Second Circuit (see sa-2,3 below) show undisputedly that the Court of Appeals violated my human rights.

Firstly, the Court of Appeals issued on 1-3-85 (see sa-2,3) the mandate consisting of the Order of dismissal (see sa-1) without giving me the opportunity to file a timely motion for rehearing. I received the Order of the dismissal of my appeal on January 8, 1985 (see sa-6) after the mandate had been already issued on January 3, 1985 (see sa-2,3) and had been received by the District Court (see sa-1) on January 7, 1985.

Secondly, the supplemental record containing essential to my appeal transcripts of the District Court's proceedings on May 25, 1984 and on August 3, 1984 was docketed

in the Court of Appeals on 1-11-85 (see sa-2,3), seven days after the issuance of the mandate. These transcripts were ordered on August 27, 1984. See sa-6,7.

Thirdly, my Motion for the Direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of the District Court's proceedings on May 25, 1984 and on August 3, 1984, which had been mailed to the Clerk of the Court of Appeals for the Second Circuit on December 20, 1984 (see sa-6,9), was never filed (see sa-2,3).

I, the petitioner, once more respectfully request this Court to obtain in accordance with Rule 19.1 of the Rules of this Court the Appendix to the briefs and the Docket Entries, which are essential to the proper understanding of my Petition for a Writ of Certiorari, from the Clerk of the Court of Appeals for the Second Circuit.

CONCLUSION

For all the forgoing reasons, I the petitioner respectfully request this Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

George L. Karapinka
Petitioner pro se

3557 Collins Ferry Road, B-14
Morgantown, West Virginia
26505

SUPPLEMENTAL APPENDIX

(The following stamp and typewritten receipt from the U.S. District Court were superimposed on the Order of dismissal of the appeal which Order can be found on a-1 of the Petition for a Writ of Certiorari.)

"AIMS"

U.S. DISTRICT COURT
N.D. OF N.Y.
F I L E D

JAN 7 - 1985

AT ____ OCLOCK ___M
J.R. SCULLY Clerk
UTICA

The mandate, consisting of the items shecked below, has been received.

opinion
X order
statement of costs

Received by x Wm. A. Murphy
Date 1/7/85

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

84-7916

	DATE	FILINGS-PROCEEDINGS
SM	11/05/84	Copy of district court docket entries and notice of appeal on behalf of Appellant Karapinka filed (Pro se)
RAG	11-05-85	Record on appeal filed (original papers of district court) (pro se)
RAG	11-05-84	Appellant Karapinka Form C filed (pro se)(w/pfs)(Received 09-04-
RAG	11-05-84	Appellant Karapinka Form D filed (pro se) (Received 09-04-84)
RAG	11-05-84	Appellee Union Carbide Corp. Counter-designation of the Appendix filed (w/pfs)(Received 10-15-84)
JJ	11/9/84	Scheduling Order #1 Filed (Pro Se)
MM	11-30-84	Appellee UNION CARBIDE motion for dismissal of the appeal for lack of jurisdiction filed (w/ps)
SM	12-07-84	Appellant Karapinka's memorandum in opposition to the motion of defendant appellee Union Carbide Corporation for dismissal of the appeal for lack of jurisdiction filed (W/PS)(Pro se)

jc	12-17-84	Appellant brief filed w/ps
jc	12-17-84	Appellant apendix filed w/ps
jc	12-17-84	Scheduling Order No. 2 filed (Pro-se)
JJ	12/24/84	Oder granting Appellee UCarbide Motion for Dismissal of the Appeal filed; (w/pfs) (Endorsed on Motion filed 11/30/84) (TJM, AlK, RJC CJJ)
JJ	1-3-85	Issued certified copy of order dated 12/24/84
cas	1-11-85	Supplemental record on appeal filed (original papers of district court)
SM	1/15/85	Appellant Karapinka petition for rehearing filed (W/PS) (Pro se)
mjf	3-20-85	Order denying appellant KARAPINKA petition for rehearing filed

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of March one thousand nine hundred and eighty-five.

Present:

HON. THOMAS J. MESKILL,

HON. AMALYA L. KEARSE,

HON. RICHARD J. CARDAMONE,

Circuit Judges,

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED

MAR 20 1985

ELAINE B. GOLDSMITH, CLERK

GEORGE L. KARAPINKA, Plaintiff-Appellant v. UNION CARBIDE CORPORATION, Defendant-Appellee.	No. 84-7916

A petition for a rehearing having been filed by plaintiff-appellant, George L. Karapinka, pro-se,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

x Elaine B. Goldsmith

Elaine B. Goldsmith,
Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

GEORGE L. KARAPINKA, Appellant vs. UNION CARBIDE CORPORATION, Appellee	No. 84-7916 AFFIDAVIT OF GEORGE L. KARAPINKA

State of West Virginia)
County of Monongalia)

George L. Karapinka of full age being duly sworn upon his oath, deposes and says:

1. I make this Affidavit in support of my motion for rehearing of Union Carbide Corporation's motion for dismissal of my appeal.

2. I received the copy of the Order of this Court of December 24, 1984 granting Union Carbide Corporation's motion for dismissal of my appeal on January 8, 1985 in the usual daily mail delivery.

3. I paid my appeal's fee of $70.00,

$5.00 filing fee and $65.00 docketing fee, on August 28, 1984. The copy of the cancelled check was enclosed with my letter to the Clerk of this Court of November 12, 1984.

4. I ordered the transcripts of the District Court proceedings in this case of May 25, 1984 and of August 3, 1984 on August 27, 1984.

5. I did not receive the copy of the judgement refferred to by Union Carbide Corporation on page 4 of it's memorandum in support of it's motion for dismissal of my appeal.

6. During my argument in opposition to Union Carbide Corporation's Motion Under Rule 12(b)(6) for Partial Dismissal of the Amended Complaint and for a more definite Statement under Rule 12(e) on May 25, 1984 I was interrupted and not permitted by the District Court to complete my argument.

7. During my argument in support of my Motion to Reconsider District Court Jurgment of July 10, 1984 on August 3, 1984 I was interrupted and not permitted by the District

Court to complete my argument.

8. On December 24, 1984 during my examination of the Docket Entries of this case No. 84-7916 at about 1;30 PM in the Clerk's Office of this Court I did not see the entry there of this Court's Order of December 24, 1984 granting Union Carbide Corporation's motion for dismissal of my appeal.

9. On December 24, 1984 during my examination of the Docket Entries of this case No. 84-7916 in the Clerk's Office of this Court I did not see the entry there of the Affidavit of George L. Karapinka dated December 4, 1984 in opposition to Union Carbide Corporation for dismissal of my appeal.

10. On December 24, 1984 during my examination of the Docket Entries in this case No. 84-7916 in the Clerk's Office of this Court I did not see the entry of any supplemental record containing the transcripts of District Court proceedings in this case on May 25, 1984.

11.On December 24, 1984 during my examina-

tion of the Docket Entries of this case No. 84-7916 in the Clerk's Office of this Court I did not see there the entry of the Notice of Appearence for any of Union Carbide Corporation's attorneys.

12. On December 20, 1984 I served and mailed to the Clerk of this Court the supporting Affidavit of George L. Karapinka and the Notice of Motion for Direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of the Court proceedings of the District Court on May 25, 1984 and on August 3, 1984.

x George L. Karapinka
George L. Karapinka

Sworn and subscribed
before me this 9th day
of January, 1985

x G. Gayle McBee

Official Seal
NOTARY PUBLIC
State of West Virginia
G. GAYLE Mc BEE
c/o The First National
Bank of Morgantown
P.O. Box 853
Morgantown, WV 26507
My Commission Expires
Sept. 7, 1994